IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE EIGHTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

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WRIT PETITION NO : 1053 of 1995

Between:

Pathan Shanavaz Khan S/o. P. Meera Khan,

Aged 36 years, R/o. Bhavanipuram, Vijayawada,

Krishana District.

..... PETITIONER

AND

1. The A.P. State Electricity Board, through its Member Secretary,

Vidyut Sodha, Somajiguda, Hyderabad.

2. The Chief Engineer, Electricity, Operation and Maintenance,

A.P State Electricity Board, Vijaywada Thermal Power Station,

Ibrahimpatnam, Krishna District.

3. The Superintending Engineer (Operation),

A.P State Electricity Board, Vijayawada, Krishna District.

4 The Collector and District Magistrate,
Krishna District, Machilipatnam, Krishna District.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a Writ of Mandamus or any other appropriate writ or writs, order or direction, declaring the proceedings, dated 26-08-1994, issued in Lr.No.CE/O&M/VTPS/JAO-

Adm/1944/94 on the file of the second respondent, as illegal, arbitrary, discriminatory and unconstitutional and to consequently direct the respondents 1 to 3 to forthwith appoint the petitioner in any of the suitable posts in Vijayawada Thermal Power Station in lieu of acquisition of their lands for construction of Vijayawada Thermal Power Station and award costs.

Counsel for the Petitioner: Mr. K. RAGHUVEER REDDY

Counsel for the Respondents: Mr. SAMINENI KISHORE,
S.C. for A.P.S.E.B.

The Court made the following :

ORDER:

Questioning the proceedings of the 2nd respondent – Chief Engineer, Electricity, Operation & Maintenance, A.P.S.E.B., Vijayawada Thermal Power Station, dated
26-08-1994, whereby the petitioner was informed that his case had been considered in the light of the order of this Court in W.P. No.2564 of 1992, dated 06-04-1994, and that he was not selected, this writ petition has been filed.

Brief facts, to the extent necessary for the purpose of this writ petition, are that the mother of the petitioner,
Smt. Shamshunnissa Begum, owned an extent of 25 cents of land near Ibrahimpatnam, Krishna District, which was acquired by the 1st respondent – A.P. State Electricity Board for construction of Vijayawada Thermal Power Station.
The petitioner contends that though meager compensation was awarded for acquisition of the land, the land losers did not seek enhancement by way of reference under Section 18 of the Land Acquisition Act and did not challenge the acquisition proceedings inasmuch as the 1st respondent had promised that one of the dependants of the land losers would be given appointment in a suitable post. It is further stated, in the affidavit filed in support of the writ petition, that some of the persons who had lost their land were appointed as L.D.C./Helpers, posting orders were given to them and that the petitioner was not given appointment though he made an application for considering his case as early as on 07-05-1984 which was received by the 2nd respondent on 18-04-1984.

It is the case of the petitioner that there was a lot of correspondence including the letter addressed by the

2nd respondent, dated 24-05-1984, and that another letter was addressed on 25-06-1984, calling for proof of the petitioner's date of birth. Relying on this correspondence, the petitioner contends that it is evident there from that he had submitted the application as early as on 07-05-1984. It is further stated that the 4th respondent – Collector & District Magistrate, Krishna District, had recommended the petitioner's case, along with several others, on 08-08-1990 and despite the same, respondents 1 and 2 did not take any action to appoint them and therefore the petitioner was constrained to file W.P. No.2564 of 1992 seeking direction to appoint him in any suitable post in Vijayawada Thermal Power Station in lieu of acquisition of his land. Respondents are said to have filed a counter affidavit, in W.P. No.2564 of 1992, stating that persons who had lost their land of an extent of more than 50 cents alone were considered but not any other person and since the land acquired from the petitioner was less than 25 cents, he was not eligible to be considered for appointment. It is the case of the petitioner that a reply affidavit was filed in W.P. No.2564 of 1992 wherein details were furnished of persons whose land was acquired ranging from 2 cents to 17 cents and to whom the respondents had provided employment. In W.P. No.2564 of 1992, this Court, by order dated 06-04-1994, directed the petitioner to submit a representation giving details of the persons who were provided with employment though the land acquired from them was less than 50 cents and on receipt of such representation the 1st respondent was directed to issue appropriate orders, taking into consideration the age of the petitioner as on the date of his original application, within three months thereafter.

The petitioner contends that accordingly he had submitted a representation on 28-04-1994 giving particulars of the eight persons who were given employment though the land acquired from them was less than 50 cents and since no reply was forthcoming thereto, he had submitted another representation on 16-08-1994 and the 2nd respondent, vide proceedings dated 26-08-1994, had rejected the same.

The petitioner further contends that the rejection order, dated

26-08-1994, was on new grounds, which were not raised earlier by the

respondents in the proceedings before this Court in W.P. No.2564 of 1992. The petitioner contends that G.O. Ms. No.98, dated 15-04-1986, requiring an application seeking employment, to be made within one year from the date of displacement, on which reliance is placed by the respondents, has no application to his case, inasmuch as, the land of the petitioner was acquired in 1978 by passing the award in Award No.1/78 and that the petitioner had submitted an application to consider his case on 07-05-1984, which are all much prior to the date on which said
G.O. Ms. No.98, dated 15-04-1986, was issued. He further contends that several persons who made application seeking appointment beyond one year and upto 15 years from the date of displacement, were also given employment. He gives the particulars of the persons to whom the respondents gave employment and contends that the respondents had acted with discrimination. In so far as the second objection that the candidate should not be more than 25 years of age, as on the date of application, is concerned, the petitioner contends that except for the post of Helpers, for all other posts the minimum age for recruitment is 34 years and since he was eligible to be appointed either in the post of L.D.C. or Record Assistant or in any other suitable post, this objection of the respondents is also not tenable. The third ground of rejection that G.O. Ms. No.98, dated 15-04-1986, was not adopted at the time of appointment, is challenged as being totally contrary to the orders passed by this Court. The petitioner contends that in giving appointment to other persons, respondents 1 and 2 had given a total go-bye to the assurance given by them to the petitioner's parents at the time of acquisition of the land and had appointed persons at their whims and fancies. It is his case that the impugned order was passed since he had demonstrated that eight persons were provided with employment though land acquired from them ranged from 2 cents to 17 cents, which is less than the 50 cents which the respondents had contended in the earlier writ petition, to be the minimum extent required to be acquired for the purpose of providing employment to displaced persons.

A counter affidavit has been filed on behalf of the respondents wherein it is admitted that the 1st respondent had acquired an extent of 25 cents of land belonging to the mother of the petitioner on 25-04-1978 and compensation of

Rs.1,200/- was paid to her. It is contended that at the time of acquisition, no assurance was given to the land losers that one of their dependants would be provided employment in the A.P. State Electricity Board (for short 'the Board') in a suitable post. It is stated that neither the petitioner's father nor his mother had submitted any application for job immediately and that it is only on the petitioner obtaining qualifications, that he had applied for the job. Respondents contend that as per the rules in vogue, the application should have been made within the prescribed time but the petitioner had taken his own time in submitting the application to his advantage. Reference is made to the representation submitted by the petitioner's father on 07-05-1984 indicating the petitioner's academic qualification as B.A. Final year examination without mentioning his date of birth. Respondents contend that the petitioner was aged 26 years and 27 days at the time of submission of the said representation, dated 07-05-1984, and was not a graduate, and was therefore not eligible for appointment as helper in OSS cadre, since as per OSS

Non-Statutory Rules, the age limit for appointment is 25 years. It is further stated that after the petitioner acquiring Bachelor of Degree in Arts, the petitioner's mother submitted a representation, through the District Collector, for his employment on 08-08-1990 and the same was forwarded to the Chief Engineer/O&M/VTPS on 01-12-1990 and that her application for providing appointment to her son-petitioner, was not favourably considered as the application was not made within one year from the date of acquisition of the land. It is further stated that the petitioner was informed, vide letter dated 26-08-1994, that employment to eight persons, referred to in the affidavit filed in W.P. No.2564 of 1992, was given as they were within the prescribed age limit as on the date when the said persons had applied to the Board, and since there were no guidelines framed by the Board at the relevant time, they were absorbed into the services of the Board. At the time of their appointment, G.O. Ms. No.98, dated 15-04-1986, was not adopted by the Board. It is further stated that as per the directions of this Court in

W.P. No.2564 of 1992, appropriate orders were passed and communicated to the petitioner taking into consideration his age as on the date of his initial application, keeping in view Article 14 of the Constitution of India. No assurance was given to the land losers that one of their dependants would be provided with employment in the Board in a suitable post and that the petitioner

had applied for job taking his own time after obtaining requisite qualifications. The allegations that some applicants who had applied for jobs, beyond one year upto 15 years after displacement, were provided with jobs is denied and it is stated that the Board had not recommended any such case for providing employment. It is stated that as per OSS Non-Statutory Rules, the age of the applicant as on the date of submission of application should not be more than 25 years for an OSS post and that the educational qualification is under-graduation. It is stated that the petitioner's application, dated 07-05-1984, was rejected on two grounds viz., (1) it was not made within the required time; and (2) the petitioner was over aged i.e. 26 years 27 days at the time of his first application.

Sri S. Sudeep Reddy, learned counsel appearing on behalf of Sri K. Raghuveer Reddy, learned counsel for the petitioner, contends that the impugned order has been passed only to circumvent the earlier order passed by this Court in W.P. No.2564 of 1992, dated 06-04-1994. Learned counsel states that the grounds for rejection of the petitioner's case in the impugned order, dated 26-08-1994, are totally different from the grounds of rejection put forth by the respondents before this Court in W.P. No.2564 of 1992. He submits that the respondents are bent upon rejecting the case of the petitioner on one ground or the other and that since the grounds stated in the impugned order do not stand legal scrutiny they are liable to be summarily rejected.

With regard to the objection of the respondents that the prescribed age of 25 years is the minimum age for appointment as Helper, learned counsel refers to the specific averment, in page-4 of the affidavit, wherein the petitioner had stated that except for the post of Helper, for all other posts, the age for recruitment was 34 years, and since he was eligible to be appointed either in the post of L.D.C. or Record Assistant or in any other suitable post, this objection is without basis. This specific averment in the affidavit has not been denied by the respondents, and it must therefore be taken as understood that for appointment to the post of L.D.C. or Record Assistant, the prescribed age limit is 34 years, in which event, the petitioner was well within the age limit at the time of his first representation seeking appointment.

The second ground for rejection is that the petitioner had not submitted the application within one year from the date on which his land was acquired. The allegation that belated applications have been entertained in other cases has been denied by the respondents. The prescription of one year is traced to G.O. Ms. No.98, Irrigation (Projects Wing) Department, dated 15-04-1986. The fact remains that acquisition of the petitioner's land in 1978 and his first representation, dated 07-05-1984, were both prior to the date on which G.O. Ms. No.98, dated 15-04-1984, came into force. While it is the case of the respondents that there were no rules or guidelines in existence earlier, learned counsel for the petitioner relies on the first reference in G.O. Ms. No.98, dated 15-04-1986, i.e. G.O. Ms. No.676, Irrigation & Power Department, dated 17-11-1978, and contends that providing employment to land oustees is governed by the instructions issued in the said G.O. Unfortunately neither side has placed a copy of the said G.O. before this Court, and it is therefore not possible for this Court to examine as to whether the conditions prescribed for providing employment to land oustees in the said G.O. has been complied with by the respondents or not.

Be that as it may, the fact remains that several other persons, whose land of different extents, ranging from 2 cents to 17 cents, was acquired, were provided with employment. In the absence of any guidelines in the year 1978 requiring applications for appointment to be submitted within one year of acquisition, submission of application by the petitioner in the year 1984 cannot be a ground for rejecting his case, more so, since it is not denied that the petitioner was eligible, for being considered for appointment to the post of L.D.C./Record Assistant, since he fell within the prescribed age limit at the time of submission of his application on
07-05-1984. Reliance placed by the respondents on G.O. Ms. No.98, dated 15-04-1986, wherein this one year limit is prescribed, is of no consequence, since this G.O. was not in existence either at the time when the petitioner's land was acquired in 1978 or when an application was submitted in 1984 seeking employment for the petitioner herein. The impugned order, dated 26-08-1994, is, therefore, liable to be set aside.

Sri S. Sudeep Reddy, learned counsel appearing for the petitioner, vehemently contends that no useful purpose would be served in once again directing the respondents to consider the petitioner's case for appointment, inasmuch as, the shifting stand of the respondents, which is obvious when the grounds of rejection in the earlier round of litigtion in W.P. No.2564 of 1992 are compared with those in subsequent order of rejection dated 26-08-1994, reveals their intention of once again rejecting the petitioner's case for appointment which would result in his having to once again approach this Court seeking the very same relief, as in the present writ petition. Learned counsel contends that while the order of rejection passed on 26-08-1994 was challenged soon thereafter, pendency of the present writ petition for eleven (11) years has resulted in the petitioner reaching the age of 46 years without employment and if the respondents were once again given the leeway to consider the petitioner's case, another decade would lapse and the petitioner would reach the age of superannuation without being provided employment by the respondents. Learned counsel relies on the judgment of this Court in ***S. Purushotham v. District Collector, Karimnagar,*** wherein this Court relying on the judgments of the Supreme Court in **Comptroller and Auditor-General of India v. K.S. Jagannadhan,** and

O.P. Gupta v. Union of India, held that since on two earlier occasions though this Court had directed the respondents to consider the case of the petitioner, his case was rejected, a writ of *mandamus* should be issued directing the respondents to forthwith regularize the services of the petitioner.

Relying on the aforesaid judgment of this Court,

Sri S. Sudeep Reddy, learned counsel for the petitioner, vehemently contends that the matter should not again be left to the discretion of the respondents and that a *mandamus* should be issued to the respondents to appoint the petitioner as L.D.C./Record Assistant or in any other suitable post to which he is eligible.

It is no doubt true that the grounds which have been urged by the respondents before this Court earlier

in W.P. No.2564 of 1992 are different from those urged in this writ petition, which are all, in any event, not valid. While the earlier ground of rejection was on the plea that appointments were given only to a member of the family of land oustees when land exceeding 50 cents was acquired from them, in the present writ petition the reasons given for rejection is that the petitioner is overaged at the time of submission of his application and that he had not applied for the job within one year from the date on which his land was acquired, which according to the respondents was a requirement under
G.O. Ms. No.98, dated 15-04-1986. As stated above, all these grounds of rejection are without basis and are not legally valid.

This Court undoubtedly has the power to issue a *mandamus,* if it's orders are deliberately flouted by the authorities concerned. Existence of power is however distinct from exercise of power. It is only in rare cases that a *mandamus* would issue directing appointment instead of directing the authorities to consider the case of the person concerned for appointment, since these are all matters normally left for consideration of the employer. A contract of employment is to be entered into between the employer and the employee concerned and this Court would not, normally, don the robes of or substitute itself for the employer and, except in rare cases, would not direct the mode and manner in which such a contract is to be entered into or prescribe the terms and conditions thereof.

While I am satisfied that injustice has been meted out to the petitioner and that the grounds for rejection, of his case for appointment, are not valid, I do not think it is such a case where this Court should issue a *mandamus* directing the respondents to appoint the petitioner.

The impugned order, dated 26-08-1994 is set aside. Since this Court in W.P. No.2564 of 1992, dated 06-04-1994, had directed the respondents to pass appropriate orders, taking into consideration the age of the petitioner as on the date of his original application, the respondents, in the light of what has been stated in the aforesaid paragraphs, shall consider the case of the petitioner for

appointment to the post of L.D.C./Record Assistant or in any other suitable post to which he is eligible taking into account his age at the time of submission of his initial application, his educational qualifications and pass appropriate orders within two months from the date of receipt of a copy of this order.

The writ petition is allowed. There shall however be no order as to costs.

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RAMESH RANGANATHAN, J

Date:08-07-2005.

PV

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Bilal Nazki the Acting Chief Justice on this Friday the Eighth Day of July Two Thousand and Five.

Assistant Registrar.

To

1) The Member Secretary, A.P. State Electricity Board,

Vidyut Soudha, Somajiguda, Hyderabad.

2) The Chief Engineer, Electricity, Operation and Maintenance,

A.P. State Electricity Board, Vijayawada Thermal Power Station,

Ibrahimpatnam, Krishna District.

3) The Superintending Engineer (Operation) A.P.S.E.B.,

Vijayawada, Krishna District.

4) The Collector and District Magistrate, Krishna District,

Machilipatnam, Krishna District.

5) Two C.D. copies.